

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:14-cr-00264
	:	
v.	:	
	:	Date: March 16, 2015
CHARLES HERZING,	:	
	:	
Defendant.	:	
	x	

TRANSCRIPT OF PLEA HEARING HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Government:	AUSA PHILIP H. WRIGHT AUSA LARRY R. ELLIS AUSA ERIC P. BACAJ U.S. Attorney's Office P.O. Box 1713 Charleston, WV 25326-1713
For the Defendant:	STEPHEN G. JORY, ESQ. McNeer Highland McMunn & Varner P. O. Box 1909 Elkins, WV 26241-1909
Probation Officer:	Matthew Lambert
Court Reporter:	Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E. Johnston,
2 Judge, United States District Court, Southern District of West
3 Virginia, in Charleston, West Virginia, on March 16, 2015, at
4 2:02 p.m., as follows:

5 COURTROOM DEPUTY CLERK: The matter before the Court is
6 the United States of America versus Charles Herzing, criminal
7 action 2:14-cr-00264-3, scheduled for a plea hearing.

8 THE COURT: Good afternoon. Will counsel please note
9 their appearances?

10 MR. WRIGHT: Good afternoon, Your Honor. Philip
11 Wright, Larry Ellis and Eric Bacaj and, also, James Lafferty.

12 MR. JORY: Stephen Jory on behalf of the defendant,
13 Charles Herzing, who is also present in person.

14 THE COURT: All right. Good afternoon.

15 Mr. Herzing, will you please stand, and I will ask the
16 deputy clerk to administer an oath to you at this time.

17 COURTROOM DEPUTY CLERK: Please raise your right hand.

18 **CHARLES HERZING, DEFENDANT, SWORN**

19 THE COURT: You may be seated.

20 Mr. Herzing, do you understand that you are now under oath
21 and you must tell the truth and, if you testify falsely, you may
22 face prosecution for perjury or for making a false statement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Throughout the course of this
25 hearing, I'm going to be asking you a number of questions. I

1 want to make sure that you and I are communicating clearly. So,
2 if at any time you don't understand a question that I ask or
3 anything else that occurs in this hearing, I want you to feel
4 free to speak up and seek clarification.

5 Also, if at any time you need to confer with your attorney,
6 I'll be pleased to pause the proceedings to allow you to do so.

7 Do you understand all that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Let me begin by asking you, how old are
10 you?

11 THE DEFENDANT: 64.

12 THE COURT: And can you briefly describe your
13 educational background?

14 THE DEFENDANT: I've got a Bachelor's Degree in
15 Chemical Engineering from Villanova University.

16 THE COURT: And, just for the record, can you read and
17 write and understand the English language?

18 THE DEFENDANT: Yes, I can.

19 THE COURT: Can you briefly describe your work
20 experience?

21 THE DEFENDANT: From the time I graduated college until
22 now, I've been in chemical sales; originally, with Union Carbide,
23 and then with a series of other companies since then.

24 THE COURT: All right. Have you taken any medicine or
25 drugs or consumed any alcoholic beverages within the last

1 24 hours?

2 THE DEFENDANT: No, sir.

3 THE COURT: Including prescription drugs?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you ever been treated for any mental
6 illness or addiction to drugs of any kind?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you know where you are and why you are
9 here today?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Do you have any hearing impairment or other
12 disability which would prevent you from fully participating in
13 this hearing today?

14 THE DEFENDANT: No, I do not.

15 THE COURT: Mr. Jory, do you have any reason to
16 question the competence of your client?

17 MR. JORY: I do not, Your Honor

18 THE COURT: All right. I believe I've been provided
19 with the original of the plea agreement.

20 Mr. Wright, has the plea agreement changed in any way since
21 the courtesy copy that was provided to my chambers?

22 MS. COLEMAN: No, Your Honor.

23 THE COURT: All right. Very well.

24 Mr. Herzing, is that your signature that appears on the
25 seventh and final page of the plea agreement?

1 THE DEFENDANT: Yes, it is.

2 THE COURT: And are those your initials that appear on
3 the other pages of the plea agreement?

4 THE DEFENDANT: Yes, they do.

5 THE COURT: Have you read and reviewed with your
6 counsel each of the 16 paragraphs of the plea agreement and the
7 exhibits attached to the plea agreement?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: And do you wish to have the various terms
10 of the plea agreement orally stated on the record or do you
11 believe that that's unnecessary?

12 THE DEFENDANT: That's unnecessary.

13 THE COURT: And do you understand and agree with all of
14 the terms and provisions contained in the plea agreement?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: And, Mr. Jory, have you reviewed with your
17 client each of the 16 paragraphs in the plea agreement and the
18 exhibit attached to it?

19 MR. JORY: We have reviewed that, Your Honor.

20 THE COURT: All right. Mr. Jory and Mr. Wright, is
21 there any reason why either of you believe that the various terms
22 of the plea agreement should be orally stated on the record?

23 MR. WRIGHT: No, Your Honor.

24 MR. JORY: No, Your Honor.

25 THE COURT: All right. Very well.

1 Nonetheless, Mr. Herzing, there are some provisions of the
2 plea agreement I want to discuss with you, starting with Section
3 10 on Page 4, and that is entitled "Stipulation of Facts and
4 Wavier of Federal Rule of Evidence 410".

5 Now, this section addresses a couple of different matters,
6 the first of which is the Stipulation of Facts, which is attached
7 to the plea agreement as Exhibit A, and I want to turn your
8 attention to that document now. That is a four-page document
9 and, on the fourth page, is that your signature which appears
10 there?

11 THE DEFENDANT: Yes, it is.

12 THE COURT: And have you read the Stipulation of Facts?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: And do you agree that all of the facts
15 contained in the stipulation are true?

16 THE DEFENDANT: I believe so, yes.

17 THE COURT: All right. A little bit about what will be
18 happening from here on out. I will be asking the probation
19 officer to prepare a Presentence Investigation Report. That
20 report will contain detailed recommended factual findings
21 regarding this offense and your background, among other things.

22 Ultimately, at sentencing, I will make factual findings
23 based at least in part on the recommendations contained in the
24 Presentence Report.

25 Now, you and the government have reached an agreement

1 regarding certain facts contained in this stipulation, but I want
2 you to understand that in this process, neither the probation
3 officer, nor this Court, are bound by the Stipulation of Facts.
4 Do you understand that?

5 THE DEFENDANT: Yes, I understand that.

6 THE COURT: And do you further understand that if I
7 make factual findings that are different from or inconsistent
8 with the facts contained in the stipulation, you will still be
9 bound by your guilty plea and would have no right to withdraw it?
10 Do you understand that?

11 THE DEFENDANT: I understand.

12 THE COURT: All right. Now, the other matter addressed
13 in Section 10 is a Waiver of Federal Rule of Evidence 410.

14 Now, first of all, do you understand that a "waiver" is a
15 legal term that means you're giving something up?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. And, then, Rule 410 generally
18 provides that information or documents regarding plea
19 negotiations, and this Stipulation of Fact would fall into that
20 category, those things are generally not admissible at trial; in
21 other words, the government can't use that sort of thing against
22 you at trial.

23 However, if you withdraw from this plea agreement or if it's
24 no longer any good because you have violated one or more of its
25 terms and there is a subsequent trial, then under this waiver,

1 the government would be allowed to present the Stipulation of
2 Facts in its case in chief or for other purposes at that trial.
3 Do you understand that waiver?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: All right. Next, I want to refer you to
6 Section 12 of the plea agreement, which appears on Page 5, and is
7 entitled "Waiver of Appeal and Collateral Attack".

8 Now, this section relates to a couple of different
9 procedures I want to describe to you briefly.

10 An "appeal" is a procedure by which a party to a case before
11 a District Court like this one and, in a criminal case, it's
12 often the defendant, goes to the Court of Appeals, or the next
13 level up of the court system, and argues that certain errors or
14 mistakes may have taken place in the defendant's criminal case
15 before the District Court.

16 A collateral attack is similar, and it's sometimes referred
17 to as a "habeas corpus petition", but it is a separate civil case
18 that a defendant may file after their criminal case is over in
19 which they also may argue that certain errors or mistakes may
20 have taken place in their criminal case before the District
21 Court.

22 Now, do you understand those two procedures, at least as
23 I've briefly described them to you?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: All right. The other thing I want to

1 explain to you before we get to Section 12 is that there are two
2 phases to a criminal case. The first is the guilt or innocence
3 phase, and that phase begins at the very beginning of the case
4 and runs through all the proceedings up until that guilt or
5 innocence determination is made. Sometimes, that's by a trial;
6 much more often, it's by a guilty plea, like what we're doing
7 today.

8 Next, then, is the penalty phase in which the penalty for
9 the crime is determined and that is -- generally concludes with a
10 sentencing hearing at the end of the case.

11 Now, do you understand the two phases of a criminal case, as
12 I've described them to you?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: All right. Give me just a moment.

15 (Pause).

16 THE COURT: All right. So, then, in the first
17 paragraph of Section 12, do you understand that you waive the
18 right to appeal your conviction and any sentence of imprisonment,
19 fine or term of probation, or the manner in which the sentence
20 was determined on any ground whatsoever, with one exception, you
21 may appeal any sentence that is greater than the maximum penalty
22 set forth by statute? Do you understand that waiver?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Anything about it that you don't understand
25 or that you have questions about?

1 THE DEFENDANT: No. I'm fine.

2 THE COURT: All right. Then, in the second paragraph
3 of Section 12, do you also understand that you may not file a
4 later civil proceeding, sometimes referred to as a "collateral
5 attack" or a "habeas corpus petition", challenging your plea,
6 conviction or sentence?

7 THE DEFENDANT: Yes. I understand.

8 THE COURT: And, finally, do you understand that you
9 are in no event waiving your right to claim ineffective
10 assistance of counsel either on appeal or by collateral attack?

11 THE DEFENDANT: I understand.

12 THE COURT: All right. Next, I want to refer you to
13 Section 13 of the plea agreement, which is also on Page 5, and
14 it's entitled "Waiver of FOIA and Privacy Right." Now this
15 waiver means that you can't go back after this case is over and
16 seek documents or other information about the case from the
17 government, even with a Freedom of Information Act request. Do
18 you understand that waiver?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Now, Mr. Jory, have you thoroughly reviewed
21 the plea agreement with your client?

22 MR. JORY: Yes, Your Honor.

23 THE COURT: And do you believe that he fully
24 understands the various terms and provisions of the plea
25 agreement, including the waivers and other matters that I have

1 gone other with him this afternoon?

2 MR. JORY: I do, Your Honor.

3 THE COURT: And, Mr. Herzing, have you reviewed the
4 plea agreement in detail with your attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you believe that you have had
7 adequate time to discuss your case fully with your attorney?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Has your attorney answered any questions
10 that you have had about your case?

11 THE DEFENDANT: Yes.

12 THE COURT: And, Mr. Jory, during your representation
13 of the defendant, has he been cooperative?

14 MR. JORY: He has, Your Honor.

15 THE COURT: Mr. Herzing, has anything further been
16 agreed to, either orally or in writing, that is not contained in
17 the plea agreement?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: All right. I will order that the plea
20 agreement be filed.

21 I will find that the defendant understands and agrees with
22 the terms contained in the plea agreement.

23 I will defer accepting or rejecting the plea agreement until
24 sentencing, after the Presentence Report has been received and
25 considered.

1 Now, Mr. Herzing, have you received and read and reviewed
2 with your attorney the superseding indictment returned by the
3 grand jury in this case?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand the charges contained
6 in the superseding indictment?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And would you like me to read the
9 superseding indictment to you or will you waive the reading?

10 THE DEFENDANT: I'll waive the reading.

11 THE COURT: All right. As I understand it, you will be
12 pleading guilty to Count 2 of the superseding indictment, which
13 charges you with causing unlawful discharge of refuse matter into
14 navigable water in violation of 33 U. S. C. Sections 407 and 411.

15 Now, I want to go over that charge and that statute with you
16 in just a little bit more detail.

17 Section 407 of Title 33 states in pertinent part that:

18 "It shall be unlawful to cause to be discharged, or
19 deposited from the shore any refuse matter of any kind or
20 description whatever other than that flowing from streets and
21 sewers and passing therefrom in liquid state, into any navigable
22 waters in the United States, provided that the Secretary of the
23 Army, whenever in the judgment of the Chief of Engineers
24 anchorage and navigation will not be injured thereby, may prevent
25 the deposit of any material above mentioned in navigable waters,

1 within limits to be defined and under conditions to be prescribed
2 by him, provided application is made to him prior to depositing
3 such material; and, whenever any permit is so granted, the
4 conditions thereof shall be strictly complied with, and any
5 violation thereof shall be unlawful."

6 Now, in order to prove that charge against you, the
7 government would have to prove the following elements, each
8 beyond a reasonable doubt, and they are:

9 First, that you caused refuse to be discharged or deposited
10 into a navigable water of the United States;

11 And, second, you did so without a permit or in violation of
12 the permit.

13 Now, I want to share with you some definitions that apply to
14 what I have just told you.

15 The word "cause" means that the result was a probable
16 consequence of your conduct.

17 The word "refuse" includes all foreign substances and
18 pollutants apart from those flowing from streets and sewers and
19 passing therefrom in a liquid state.

20 "Discharge" means to pour forth or emit.

21 "Deposit" means to lay, place, or throw something down.

22 The term "navigable waters" means the waters of the United
23 States, including the territorial seas;

24 And a "permit" is a permit issued by the U. S. Army Corp of
25 Engineers.

1 Is there any objection to the elements as I have described
2 them?

3 MR. WRIGHT: No, Your Honor.

4 MR. JORY: No, Your Honor.

5 THE COURT: All right. I note that you are also named
6 in Counts 1 and 3 of the superseding indictment but, as I
7 understand it, propose to plead guilty to Count 2 and, with
8 regard to Count 2, I now want to go over with you any maximum and
9 minimum penalties you may face as a result of your plea, and that
10 is a minimum term of imprisonment of 30 days and a maximum term
11 of imprisonment of one year; a fine of up to \$25,000.00 per day
12 of violation -- or date of violation, alternatively; and a
13 maximum fine of \$100,000.00, or twice the gross pecuniary gain or
14 loss resulting from your conduct, whichever is greater; and a
15 maximum term of supervised release of one year. A mandatory
16 special assessment of \$25.00 would be required; and restitution
17 could be ordered, if it were found to be applicable.

18 Next, I want to talk with you regarding the federal
19 sentencing guidelines. Has your attorney talked with you about
20 the guidelines and how they generally work?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And has he shown you that chart in the back
23 of the book?

24 THE DEFENDANT: Yes, he has.

25 THE COURT: Has he explained to you how the chart might

1 work, at least in your particular case?

2 THE DEFENDANT: Yes. It's been explained to me.

3 THE COURT: All right. Well, the guidelines are
4 advisory, meaning they're not mandatory or don't have to be
5 followed, but they'll nevertheless play an important role in your
6 case from here on out.

7 This Court will consider the factors set forth in 18 U. S.
8 C. Section 3553(a), including the advisory guidelines, in
9 determining the appropriate sentence in this case.

10 I now want to ask you some questions that will help me to
11 understand your understanding of the guidelines.

12 Have you discussed with your attorney the various factors
13 which apply in determining what the sentence in your case may be
14 under the advisory guidelines?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you understand that, on Count 2, you
19 cannot in any event receive a greater sentence than the statutory
20 maximum that I explained to you earlier?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that the Court will not
23 determine the sentence for your case until a later date, when a
24 Presentence Report has been completed, and both you and the
25 government have had an opportunity to challenge the facts and

1 analysis as reported by the probation officer?

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: Do you also understand that under a concept
4 known as "relevant conduct", this Court, in determining the Total
5 Offense Level for sentencing purposes under the guidelines, may
6 take into account any conduct, circumstances or injuries relevant
7 to the crime of which you may be convicted?

8 THE DEFENDANT: I understand.

9 THE COURT: Do you understand that after the Court has
10 determined what advisory guidelines apply to your case, the Court
11 has the authority to vary or depart from the advisory guidelines
12 and impose a sentence that is more severe or less severe than the
13 sentence called for by the guidelines?

14 THE DEFENDANT: I understand.

15 THE COURT: Do you understand that in determining your
16 sentence, the Court is obligated to calculate the applicable
17 sentencing guideline range and to consider that range, possible
18 departures under the guidelines, and other sentencing factors
19 under 18 U. S. C. Section 3553(a)?

20 THE DEFENDANT: I understand.

21 THE COURT: Do you understand that parole has been
22 abolished and, if you're sentenced to prison, you will not be
23 released on parole?

24 THE DEFENDANT: I understand.

25 THE COURT: Do you understand, if the Court accepts

1 your plea of guilty and the sentence ultimately imposed upon you
2 is more severe than you had hoped for or expected, you will still
3 be bound by your guilty plea and would have no right to withdraw
4 it?

5 THE DEFENDANT: I understand.

6 THE COURT: Next, I want to talk with you regarding
7 your trial and constitutional rights.

8 You have the right to continue to plead not guilty and
9 maintain a not guilty plea throughout these proceedings,
10 including at trial.

11 You have the right to be represented by counsel.

12 You have the right to a speedy and public trial by a jury
13 composed of citizens of this district.

14 You have the right to confront and have your attorney cross
15 examine witnesses and have your attorney move to suppress any
16 evidence he believes was illegally or unconstitutionally
17 obtained.

18 You have the right not to testify or otherwise incriminate
19 yourself, and your exercise of this right cannot be held against
20 you.

21 Do you understand these rights so far?

22 THE DEFENDANT: I do.

23 THE COURT: You have the right to have the government
24 come in here and prove its case beyond a reasonable doubt.

25 The jury's verdict would have to be unanimous.

1 You have the right to present evidence on your own behalf.
2 You have the right to testify on your own behalf at trial;
3 And you have the right to subpoena witnesses to testify for
4 you.

5 Do you understand all of these rights?

6 THE DEFENDANT: I do.

7 THE COURT: Any of them that you don't understand or
8 that you have questions about?

9 THE DEFENDANT: No, sir.

10 THE COURT: Other than your right to counsel, do you
11 understand that you will be giving up all of these rights by
12 entering a plea of guilty?

13 THE DEFENDANT: I understand.

14 THE COURT: Do you also understand that you will be
15 giving up any argument that the U. S. Attorney's Office should be
16 disqualified from this case by entering a plea of guilty?

17 THE DEFENDANT: Yes. I understand that.

18 THE COURT: Do you understand that once you have
19 entered a plea of guilty, there's not going to be a trial, no
20 jury verdict, and no findings of innocence or guilt based on
21 disputed evidence presented to me or to a jury?

22 THE DEFENDANT: I understand.

23 THE COURT: Do you believe that you fully understand
24 the consequences of entering a plea of guilty?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: And, Mr. Jory, having reviewed this case
2 and the plea agreement in detail with your client, do you believe
3 that he fully understands his rights and fully understands the
4 consequences of entering a plea of guilty?

5 MR. JORY: I do, Your Honor.

6 THE COURT: All right. I note that there is a
7 Stipulation of Facts. Is there any objection to the Court
8 utilizing that stipulation in its consideration of the factual
9 basis?

10 MR. WRIGHT: No, Your Honor.

11 MR. JORY: No, Your Honor.

12 THE COURT: All right. Very well. The Court will so
13 proceed.

14 Mr. Herzing, will you please stand?

15 As to the charge contained in Count 2 of the superseding
16 indictment, how do you plead, sir, guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: You may be seated.

19 Your counsel has been provided with a written Plea of Guilty
20 Form. I would ask that you go over that with him, if necessary,
21 sign and date it. Then I will ask him to sign it and tender it
22 to the Court.

23 All right. I'll note for the record that the defendant has
24 signed and dated the written plea of guilty form, it has been
25 witnessed by his attorney, and I will order that it be made a

1 part of the record for this proceeding.

2 Mr. Herzing, is this plea the result of any threat, or
3 coercion, or harassment of you by anyone?

4 THE DEFENDANT: No, sir.

5 THE COURT: Is it the result of any promise or
6 inducement other than those contained in the plea agreement?

7 THE DEFENDANT: No.

8 THE COURT: Are you pleading guilty to protect anyone?

9 THE DEFENDANT: No.

10 THE COURT: Are you acting voluntarily and of your own
11 will in entering this guilty plea?

12 THE DEFENDANT: Yes, I am.

13 THE COURT: Has anyone promised or predicted the exact
14 sentence which will be imposed in your case?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you understand no one could know at this
17 time the exact sentence which will be imposed?

18 THE DEFENDANT: I understand.

19 THE COURT: Has your attorney adequately represented
20 you in this matter?

21 THE DEFENDANT: Definitely.

22 THE COURT: Has your attorney left anything undone
23 which you think should have been done?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you or your attorney found any defense

1 to the charge contained in Count 2?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you, in fact, guilty of the crime
4 charged in Count 2? In other words, did you do it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. I will find that the defendant
7 is competent and capable of entering an informed plea; that the
8 plea is freely and voluntarily made; that the defendant
9 understands the nature of the charges and is aware of the
10 consequences of the plea.

11 I will find that the defendant understands his rights and
12 understands that he is giving up these rights by entering a plea
13 of guilty.

14 I will defer a factual basis finding, but I will accept the
15 plea of guilty to Count 2 of the superseding indictment and will
16 defer adjudging the defendant guilty until the time of
17 sentencing.

18 I will ask the probation officer to prepare a Presentence
19 Investigation Report.

20 Mr. Herzing, it is important that you cooperate fully with
21 the probation officer in the preparation of the Presentence
22 Report. If you fail to cooperate fully and truthfully with the
23 probation officer, you may be subject to enhancement of your
24 sentence or the forfeiture of certain sentence reductions for
25 which you might otherwise be eligible.

1 It is also important that you not commit any additional
2 crimes between now and sentencing, as there are additional
3 punishments that may imposed for committing additional crimes.

4 I'm going to set this matter for sentencing on June 22nd,
5 2015, at 10:00 a.m. I will put the other presentencing dates in
6 my post-plea order.

7 I note that the defendant is currently on, I assume, a
8 \$10,000.00 unsecured bond. Is there any objection to the
9 defendant remaining on that bond pending sentencing?

10 MR. WRIGHT: No, Your Honor.

11 THE COURT: All right. I will allow the defendant to
12 remain on that bond pending sentencing.

13 Is there anything else we need to take up today?

14 MR. WRIGHT: No, Your Honor.

15 MR. JORY: Your Honor, we don't need to take it up
16 today, but I just want to alert the Court, I do have a conflict
17 on that date, June 22, but we can address that later.

18 THE COURT: Is it the kind of conflict that might
19 resolve itself?

20 MR. JORY: No, Your Honor. I have airline tickets and
21 I will be flying that day.

22 THE COURT: Okay. All right. Well, while we're here,
23 do you have your calendar with you?

24 MR. JORY: I do, Your Honor, but, of course, things may
25 be delayed anyway, so -- but we'll see.

1 THE COURT: Okay. Well, that's a good point, I
2 suppose. We might as well wait and see, but we'll flag it and,
3 if we get a month or so out and it's still an issue, then --

4 MR. JORY: I'll certainly bring it up.

5 THE COURT: Is there a period of time associated with
6 that travel that you won't be available?

7 MR. JORY: Yes. It will be about two weeks, and that's
8 the end of it. I'm coming home that day.

9 THE COURT: Oh, I see. Okay.

10 MR. JORY: Yes, sir.

11 THE COURT: All right. Very well.

12 All right. Anything else we need to take up today?

13 MR. WRIGHT: No, Your Honor.

14 MR. JORY: Nothing further, Your Honor. Thank you.

15 THE COURT: All right. Thank you.

16 (Proceedings concluded at 2:24 p.m., March 16, 2105.)

17
18 CERTIFICATION:

19
20 I, Ayme A. Cochran, Official Court Reporter, certify that
21 the foregoing is a correct transcript from the record of
22 proceedings in the matter of United States of America, Plaintiff
23 v. Charles Herzing, Defendant, Criminal Action No. 2:14-cr-00264,
24 as reported on March 16, 2015.
25

S/Ayme A. Cochran, RMR, CRR

April 28, 2015

Ayme A. Cochran, RMR, CRR

DATE